STATE OF MICHIGAN

COURT OF APPEALS

MAXINE BLASTOW,

Plaintiff-Appellant,

v

M.D. GORGE & COMPANY and VINNI PROPERTIES,

Defendants-Appellees.

UNPUBLISHED
November 14, 1997

No. 198995
Oakland Circuit Court
LC No. 95-508548-NO

Before: Saad, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals as of right from a trial court order granting summary disposition to defendants. We reverse and remand.

Plaintiff parked her car in defendants' strip mall parking lot, facing a grassy island divider. Plaintiff got out of her car and walked to the rear of it, crossing the parking lot into the store. She noticed a large puddle in front of the entrance to the store so she walked around the puddle to the sidewalk closest to where she parked. Although she traveled across this sidewalk to enter the store, it was very wet and slippery. Because of the dangerous condition of the sidewalk, she returned to her car by a different route. She crossed the parking lot to the grassy island, which had a puddle running its length. As she stepped off the grassy island onto the parking lot, her foot landed on a patch of ice that had formed from the stagnant water. She fell and injured her leg.

This Court reviews summary disposition decisions de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). The court must consider the pleadings, affidavits, depositions, and other documentary evidence available to it and grant summary disposition if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.* This Court is liberal in finding a genuine issue of material fact. *Id.*

A business invitor has a duty to take reasonable measures within a reasonable time to diminish the hazard of injury to an invitee after an accumulation of ice and snow. *Orel v Uni-Rak Sales Co*, 454 Mich 564, 567; 563 NW2d 241 (1997); *Quinlivan v The Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261; 235 NW2d 732 (1975). Indeed, this Court has stated that "[i]t is beyond peradventure that the owners of a shopping center have a duty to their business invitees to exercise reasonable care to diminish the hazards of ice and snow accumulation." *Bauer v City of Garden City*, 139 Mich App 354, 356; 362 NW2d 280 (1984). Whether the invitor should have used salt or sand in addition to plowing presents a question of fact for the jury. *Clink v Steiner*, 162 Mich App 551, 557; 413 NW2d 45 (1987).

Moreover, an invitor's duty of reasonable care is not limited to an initial accumulation of ice and snow. *Anderson v Wiegand*, 223 Mich App 549, 557-558; 567 NW2d 452 (1997). In winter, the forces of nature can be expected to reassert themselves on a regular basis and an invitor must take reasonable steps within a reasonable time to diminish these hazards as well. *Id*. Such hazards would include melted snow refreezing into dangerous ice patches. *Id*. at 558.

Plaintiff alleges that she slipped on an icy patch that had formed on the parking lot as a result of snow that had been plowed onto the grassy divider, then melted, puddled, and refroze. Plaintiff alleges that defendants failed to sand or salt this area of the parking lot. Defendants argue that the scope of their duty to plaintiff did not include making every means of access free from ice and snow, and that plaintiff would not have been injured if she had returned to her car by the same route she left it. The facts of this case, viewed in a light most favorable to plaintiff, present classic questions of fact regarding foreseeability, causation, and comparative fault. Once a duty of reasonable care is established, the determination of proximate cause and foreseeability are ordinarily left to the trier of fact. *Riddle v McLouth Steel*, 440 Mich 85, 96; 485 NW2d 676 (1992).

Here, in arguing that plaintiff's injury would not have occurred if she had taken the same route back to her car as she took into the store, defendants improperly focus on plaintiff's conduct rather than on whether defendants' breached their duty to provide a reasonably safe premises for their invitees. Thus, the proper focus of the inquiry is whether the injury plaintiff suffered was a foreseeable consequence of *defendants*' actions. Questions regarding the reasonableness of plaintiff's conduct are relevant to the issue of her comparative negligence, which is to be determined by the trier of fact. *Quinlivan, supra* at 261.

Accordingly, because reasonable minds could differ as to whether defendants breached their duty to plaintiff to take reasonable measures within a reasonable time to diminish the hazard of accumulated ice and snow, summary disposition was improperly granted.

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ Henry W. Saad
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff